CENTRAL INTELLIGENCE AGENCY

OFFICE OF THE DIRECTOR

16 March 1982

NOTE FOR: DCI
EXDIR
DDI

The DDCI asked that you receive a copy of the attached--one of several department/agency inputs which have been incorporated into a response for DCI to forward to Judge Clark. (This response is now with DDCI.)

STAT

Executive Secretary

cc: DDCI

EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	EXDIR				
4	D/ICS		X		
5	DDI				
6	DDA		X		
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC		X		
11	IG				
12	Compt				
13	D/EEO				
14	D/Pers				
15	D/OEA				
16	C/PAD/OEA				
17	SA/IA				
18	AO/DCI				
19	C/IPD/OIS				
20	C/SECOM	X			
21					
22					
	SUSPENSE				

STAT

STAT

STAT

Date

Remarks:

D/ Executive Secretary

12 March 1982

Date

3A37 (10-81)

U.S. Department of Justice

Office of Intelligence Policy and Review

Washington, D.C. 20530

82-4298/7

March 11, 1982

MEMORANDUM FOR WILLIAM J. CASEY
Director, Central Intelligence

Re: Proposed Procedures Implementing NSDD-19

You have requested our comments on draft procedures that are proposed to implement the February 2, 1982 memorandum from the Assistant to the President for National Security Affairs that superceded NSDD-19. That memorandum establishes procedures for protecting classified National Security Council information and directs you to develop "similar procedures for protection of classified intelligence information." As is explained further below, the proposed procedures do both too much and too little in implementing this directive.

The requirement that all persons with access to this information enter into a nondisclosure agreement specifically requiring prepublication review goes well beyond the requirements of Judge Clark's memorandum and is not "similar" to anything in the NSC procedures. Further, a new SCI nondisclosure agreement recently was promulgated for CIA and other entities were encouraged to adopt the prepublication provision in that agreement. The Justice Department is considering adopting that form and we believe an affirmative decision on that issue will be reached here. That consideration is premised in part on the narrow definition and ready identifiability of SCI. The proposed requirement, however, goes beyond even the obscure definition of "sensitive intelligence information" contained in the procedure and requires submission of any material "concerning or related to intelligence matters." I do not believe that such a broad requirement is either authorized by Judge Clark's memorandum, or is necessary or advisable in this context and I doubt whether DOJ would accept such a mandate. This requirement should be deleted.

The provision on investigations of unauthorized disclosures states that use of the polygraph is appropriate in internal inquiries into such disclosures. This also is dissimilar from the NSC procedures. Further, it should be made clear that such investigations must be limited so as to not jeopardize subsequent proceedings by the FBI and Justice and to avoid

L117
NSDD 19

entangling the intelligence agencies in law enforcement activities. Also, the extent of such inquiries is limited by the procedures for reporting crimes under section 1.7(a) of Executive Order 12333 and by the requirement in section 1.7(b) of that order that serious or continuing security breaches should be referred to the Attorney General and the FBI. The reference to the polygraph should be revised to make clear that the use of that investigative tool remains a matter of internal policy and regulation.

We do not read the provision concerning media contacts to apply outside the Intelligence Community as defined in E.O. 12333. This requirement also goes beyond Judge Clark's memorandum and the NSC procedures. It should be made clear, at best, that agencies should use or attempt to develop established procedures for media contacts and clearances within their respective entities.

The procedures apply to "sensitive intelligence information." That term is defined to include essentially only Sensitive Compartmented Information (SCI). It is not clear what "special access program" information, if any, would not also be SCI. Unless the third category is intended somehow to extend beyond the concept of "intelligence information" as described in Judge Clark's memorandum, it is superfluous. If this is the intention, the procedures exceed the authority provided in that memorandum. At the same time, however, the procedures do not take full advantage of the authority provided in that memorandum by their limitation to SCI and special access programs. The memorandum authorizes procedures applicable to all "classified intelligence information." This can be cured by defining "classified intelligence information" as foreign intelligence and counterintelligence information, (as those terms are defined in E.O. 12333) and properly classified under Executive order. Unless the changes identified in the earlier paragraphs of this memorandum are accepted, however, this change will exacerbate the problems of scope and coverage identified in those paragraphs.

Finally, it should be noted that Judge Clark's memorandum requests the DCI to develop for NSC consideration "procedures for protection of sensitive intelligence information within its [NSC] control." While further NSC guidance may be necessary in this regard, it appears that what was requested by the NSC was

merely a procedure for protecting intelligence information in the hands of the NSC rather than a procedure which is intended to apply to other agencies and departments.

We would be happy to discuss our proposed changes further with your representatives.

MARY C. LAWTON
Counsel for Intelligence Policy
Office of Intelligence Policy and Review